

**DNREC**  
**Division of Watershed**  
**Stewardship**  
**Public Hearing**  
**April 4, 2013**

Acquisition of Broadkill Beach  
Easements for Delaware River Main  
Channel Deepening and Beneficial  
Reuse Project

# Introductions

## **Hearing Officer:**

- Lisa Vest

## **From DNREC :**

- Jennifer Luoma
- Frank Piorko
- Michael Powell
- Tony Pratt
- David Warga

## **From the US Army Corps of Engineers (USACE):**

- Scott Evans
- Craig Homesley
- Ed Voigt

# Exhibits for the Record

- Exhibits 1A, 1B and 1C – Maps of project area, with parcels and aerial photograph
- Exhibit 2 – Proof of Public Notice, 2 Statewide Circulation Newspapers and State Website Calendar
- Exhibit 3 – Notice of Public Hearing to Property Owners and List of Recipients
- Exhibit 4 – Draft Easement
- Exhibit 5 – List of Properties for which Easements are Needed
- Exhibit 6 – Surveys of the Easements for Each Property
- Exhibit 7 – Sign in Sheet

# Beneficial Reuse

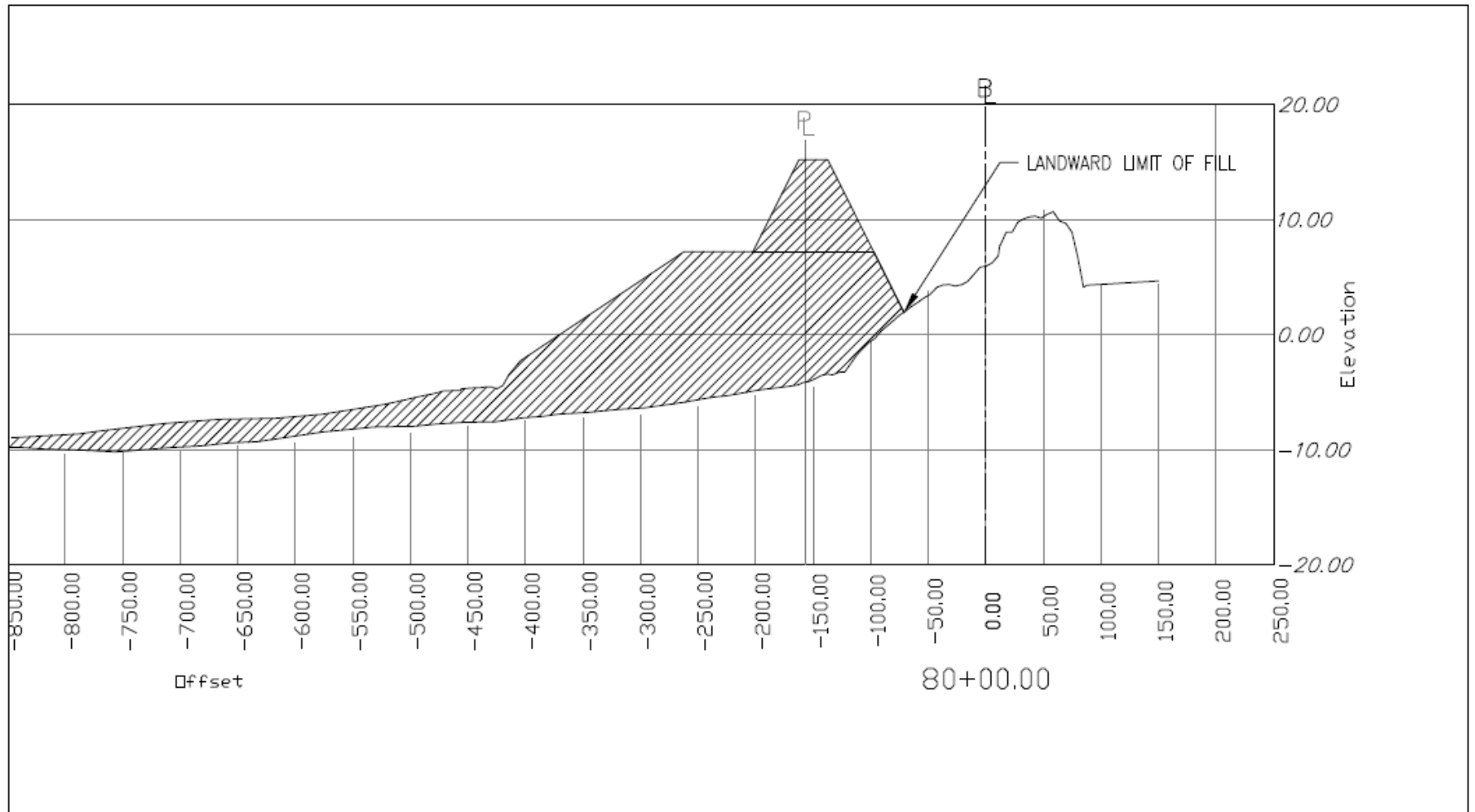
Sandy dredge material resulting from the deepening of the main channel in the Delaware River/Bay will be placed on the shoreline and **Broadkill Beach** as a **beach nourishment project**. Some of the area in which this sand will be placed falls on private lands. In order to complete the project, permission to place sand on those lands must be obtained in the form of **Easement Agreements**.

# Project Overview

- **Beachfill**

- Berm and dune at Broadkill Beach, Delaware
- Estimated bid quantity = 1.9 MCYs
- Length: approx. 15,000 ft
- Berm: approx. 150 ft wide; +8 elev; 1V:15H
- Dune: approx. 25 ft at crest; +16 elev; 1V:5H

# Project Overview



# Project Overview

- **Beachfill (cont.)**
  - Dune appurtenances (some provided by DNREC):
    - Dune grass
    - Sand fencing
    - Vehicle and pedestrian access

# Process For Obtaining Easements

- USACE submits beach nourishment template to DNREC (January 2013)
- DNREC layers USACE plan over map of Broadkill Beach to determine affected properties (February/March 2013)
- DNREC holds public hearing (April 2013)
- Properties affected by the project are appraised. Appraiser contacts property owners directly and offers opportunity for property owners to accompany appraiser on inspection of the property (April/May 2013)



# Process For Obtaining Easements

- Proposed Easements are created for each property affected and are distributed to property owners for consideration (May 2013)
- Property owners have a right to just compensation for the proposed Easements
- In other projects, the value of the Easement was outweighed by the benefits of the project to the property, so in other projects the appraised fair market value of the easement was \$0

# Process For Obtaining Easements

- Property owners may voluntarily choose to donate the Easements to DNREC (May 2013)
- For those who donate, DNREC has signed and notarized Easements recorded at Sussex County Recorder of Deeds (May 2013)
- Condemnation process may begin for properties for which easements were not donated (May 2013)

# Beachfill Tentative Schedule

- Advertise (April 2013)
- Open Bids (June 2013)
- Award Contract (July 2013)
- Start Construction (September 2013)

Contracting regulations will not allow the USACE to open bids until all real estate has been acquired.

Tax Parcel:

Return to:

Delaware Department of Natural Resources  
and Environmental Control  
89 Kings Highway  
Dover, Delaware 19901

Prepared by: Shoreline and Waterway Management Section, Division of Watershed Stewardship

#### DEED OF EASEMENT AND RESTRICTIVE COVENANT

This DEED OF EASEMENT AND RESTRICTIVE COVENANT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (his) (her) (its) (their) heirs, executors, administrators, successors, and assigns ("Grantor"), and the STATE OF DELAWARE, DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL (DNREC), its successors and assigns ("Grantee" or "DNREC")

#### WITNESSETH

WHEREAS, Grantor is the sole owner in fee simple of that tract of land identified as Tax Parcel \_\_\_\_\_ located in an unincorporated area commonly referred to as Broadkill Beach, located in Broadkill Hundred, Sussex County, Delaware, hereinafter "Property";

WHEREAS, Grantee has authority within the government of the State of Delaware to enhance, preserve and protect beaches, pursuant to, among other authorities, *7 Del. C. Ch. 68*.

WHEREAS, Grantor and Grantee recognize that the beach at Broadkill Beach, Delaware, is subject to constant erosion and degradation, thereby destroying a valuable natural resource and threatening the safety and property of Grantor, of all persons in Broadkill Beach and all the citizens of this State;

WHEREAS, Grantee currently intends to maintain, preserve, protect, and periodically renourish, some or all of the State's Delaware Bay beaches including without limitation the Delaware Coastline – Delaware & New Jersey, Broadkill Beach, Delaware Project (collectively "Project"), provided that this conveyance is not contingent on any funding or work, including without limitation, any actual construction ever being commenced or conducted, and provided that Grantee retains all powers and discretion to determine and revise any and all funding priorities and public policy concerning beach protection and oversight, at any time without notice to Grantee.

WHEREAS, construction of some or all of the Project and related work will provide increased protection against damage from coastal storms and a greatly enhanced recreational beach;

WHEREAS, Grantee wishes to enter onto the land described in Exhibit A to perform maintenance and preservation activities, periodic nourishment, and other work;

WHEREAS, in order to undertake the Project and related work, Grantee needs this conveyance;

WHEREAS, Grantee does not intend to undertake work at Broadkill Beach unless and until Grantee acquires certain interests in all real property involved at Broadkill Beach needed for the Project and related work;

WHEREAS, Grantor desires to cooperate in allowing the Project and related work to take place on the land described in Exhibit A;

WHEREAS, Grantor represents that there are no other easements or restrictive covenants on the land described in Exhibit A that supersede, limit or interfere with Grantee's exercise of the rights granted and conveyed herein, or Grantee's enforcement of the limitations and encumbrances granted and conveyed herein;

WHEREAS, Grantee, or the State, administer or own, the beach, dunes, subaqueous lands or wetlands, adjacent to, abutting, or in the immediate vicinity of the Property;

WHEREAS, Grantor acknowledges that it will benefit from Grantee having acquired this conveyance in that Grantee will be able to use the fact of the conveyance, and any others like it, in any presentations requesting other conveyances or justifying funding for the Project and related work;

WHEREAS, this conveyance supplements and adds to, and in no way supersedes or abrogates, any easement or other conveyance held by and for the benefit of any governmental entity, including without limitation, Grantee;

NOW, THEREFORE, in consideration for the sum of Ten Dollars (\$10.00), the receipt of which is acknowledged, and for the benefits to be received by Grantor associated with the Project and related work, Grantor, (his) (her) (its) (their) heirs, executors, administrators, successors and assigns, do hereby give, grant and convey unto Grantee, its successors and assigns:

A perpetual and assignable easement and right-of-way in, on, over and across the land described in Exhibit A for use by Grantee, the State of Delaware, Department of Natural Resources and Environmental Control (DNREC), its representatives, agents, contractors, and assigns, including without limitation the United States Army Corps of Engineers, to construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public beach and dune system and other erosion control and storm damage reduction measures together with appurtenances thereto, including without limitation the right to deposit sand; to accomplish any alterations of contours; to construct berms (and dunes); to nourish and renourish periodically; to move, store and remove equipment and supplies; to erect and remove temporary structures; to perform any other work necessary and incident to construction, periodic renourishment and maintenance of the Project, together with the right of public use and access; to post signs; to plant vegetation on said dunes and berms; to erect, maintain, and remove silt-screens, sand and

snow fence; to facilitate preservation of dunes and vegetation through prohibiting or otherwise limiting public access to dune areas; to trim, cut, fell, and remove all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles; and to make surveys, designs and studies, for the rights of ingress, egress, and regress, whether to and from the Property or otherwise, at any and all hours, by any and all authorized persons, whether employed by Grantee, or acting under contract with Grantee, with any and all equipment which Grantee deems necessary, for any purpose including without limitation, enhancement, protection or preservation of the Beach; reserving, however, to Grantor, the right to construct dune overwalk structures in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, and that prior approval of the plans and specifications for such structures is obtained from DNREC and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the project; and further reserving to the Grantors, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired, subject however to existing easements for public roads and highways, public utilities, railroads and pipelines;

A temporary easement and right-of-way, in, on, over and across the land described in Exhibit A, for a period not to exceed 24 months, beginning with the date possession of the land is granted to Grantee, for use by its representatives, agents, and contractors as a borrow area, and/or work area, including the right to borrow and/or deposit fill, spoil and waste material thereon, move, store and remove equipment, and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incidental to the construction of the Delaware Coastline – Delaware & New Jersey, Broadkill Beach, Delaware Project, together with the right to trim, cut, fell, and remove there from all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to Grantor all such rights and privileges as may be used without interfering with or abridging the rights and easements hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines;

A perpetual and assignable restrictive covenant and equitable servitude ("restrictive covenant"), in aid of the easement, to prohibit Grantor from erecting, placing or constructing any structure, rock, concrete or fixture, including without limitation any landscaping material, building, or piling, on the land described in Exhibit A, and Grantee may remove any such offending structure, rock, concrete or fixture, at Grantor's sole expense for removal with no compensation due to Grantor for loss or damage, and Grantee shall have and retain all legal and equitable remedies including cost recovery and injunctive relief for removal of any offending structures or fixtures;

FURTHERMORE, Grantor hereby acknowledges that acceptance by Grantee of this conveyance does not exempt Grantor from complying with all laws, ordinances and regulations of any governmental entity, including without limitation the State of Delaware, Sussex County, and the United States;

FURTHER, Grantee shall be entitled to enter upon the Property at reasonable times for the purpose of making inspections to determine if there has been a continuing compliance with

the terms of this conveyance. Grantee shall have the right, by all appropriate legal proceedings, at law or in equity, to enforce the purposes of this conveyance, including without limitation, injunctive relief;

FURTHER, this conveyance shall run with the land and shall be binding upon, and shall insure to the benefit of, Grantor, Grantee, and their respective heirs, executors, administrators, successors and assigns.

FURTHER, both parties hereto acknowledge that Grantor has not verified the accuracy of Exhibit "A" attached hereto and relies upon Grantee with respect to the accuracy of said description. In the event the description contained in Exhibit "A" is deemed to be inaccurate in any respect, Grantor's true property ownership rights shall not be affected by any such inaccuracy, as Grantor's chain of title and the descriptions contained in his deed of record shall be the controlling documents for determining the extent and scope of Grantor's property ownership rights.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
WITNESS \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
WITNESS \_\_\_\_\_ (SEAL)

Accepted by the  
DEPARTMENT OF NATURAL  
RESOURCES and ENVIRONMENTAL  
CONTROL, Grantee

\_\_\_\_\_  
WITNESS By: \_\_\_\_\_ (SEAL)  
Collin O'Mara, Secretary

STATE OF )  
 ) SS.  
COUNTY OF )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally came before me, the subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, party to the foregoing Indenture of Writing, known to me personally to be such, and acknowledged this Indenture of Writing to be his/her act and deed.

GIVEN under my hand and seal of office of the day and year aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) SS.  
COUNTY OF )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally came before me, the subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, party to the foregoing Indenture of Writing, known to me personally to be such, and acknowledged this Indenture of Writing to be his/her act and deed.

GIVEN under my hand and seal of office of the day and year aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) SS.  
COUNTY OF )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally came before me, the subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, party to the foregoing Indenture of Writing, known to me personally to be such, and acknowledged this Indenture of Writing to be his/her act and deed.

GIVEN under my hand and seal of office of the day and year aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF DELAWARE )  
 ) SS.



COUNTY OF KENT )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally came before me, the subscriber, a Notary Public for the State and County aforesaid, \_\_\_\_\_, Secretary of the Department of Natural Resources and Environmental Control, the Grantee of the foregoing Indenture of Writing, known to me personally to be such, and acknowledged this Indenture of Writing to be his act and deed and said act and deed of the Department of Natural Resources and Environmental Control.

GIVEN under my hand and seal of office of the day and year aforesaid.

\_\_\_\_\_  
Notary Public

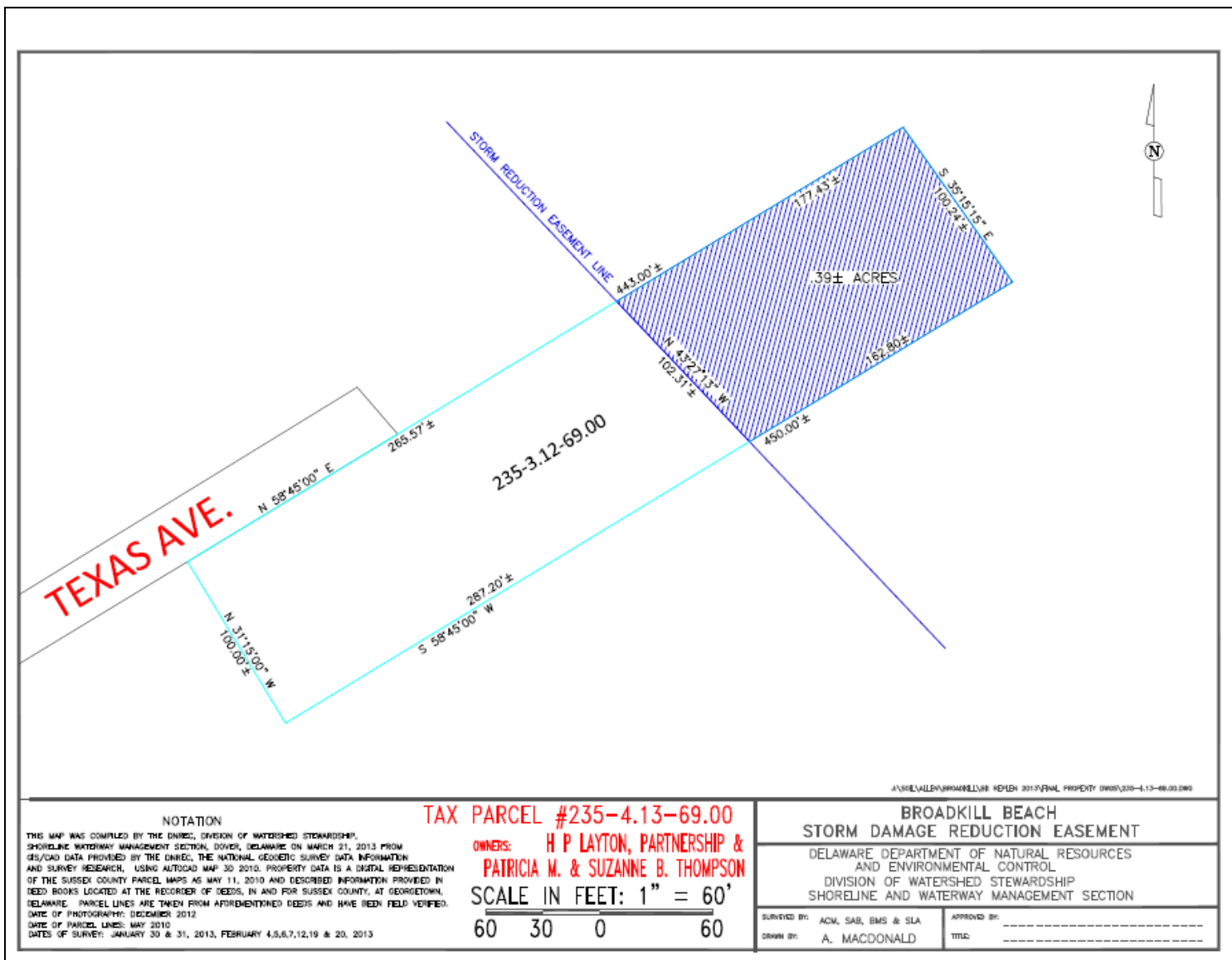
*DLO/grc/l/draft*

“Exhibit A”

ALL those certain lots, pieces and parcels of land situate, lying and being in Broadkill Hundred, Sussex County, State of Delaware, known and designated as Lots 1 & 2, Block L, North Shores, Broadkill Beach.

BEGINNING at a point on the southeasterly side of Texas Avenue (30 feet wide); said point being located, North 58 degrees 45 minutes East a distance of 325.77 feet from the intersection of the Northeasterly side of Bay Shore Drive (50 feet wide) with the Southeasterly side of Texas Avenue (30 feet wide), said point being a found iron pin set in concrete that has been disturbed; thence running North 58 degrees 45 minutes East a distance of 265.57 feet  $\pm$  more or less to a point of the beginning of easement; thence continuing North 58 degrees 45 minutes East a distance of 177.43 feet  $\pm$  more or less to a point; thence turning and running South 35 degrees 15 minutes and 15 seconds East a distance of 100.24 feet  $\pm$  more or less to a point; thence turning and running South 58 degrees 45 minutes West a distance of 162.80 feet  $\pm$  more or less to a point; thence turning and running South 43 degrees 27 minutes 13 seconds West a distance of 102.31 feet  $\pm$  more or less to a point the beginning of easement be the contents what they may.

# Example Exhibit A



Questions?

# Contact Information

## DNREC

- Jennifer Luoma
- Office Phone:(302) 739-9921
- Email: [Jennifer.Luoma@state.de.us](mailto:Jennifer.Luoma@state.de.us)

## US Army Corps of Engineers

- Scott Evans, Project Manager
- Office Phone: (215) 656-6680
- Email: [Scott.r.evans@usace.army.mil](mailto:Scott.r.evans@usace.army.mil)